

SENATE BILL 2775
By Bryson

AN ACT to amend Tennessee Code Annotated, Title 3;
Title 5; Title 6; Title 8 and Title 49, to enact the
"Uniform Management of Public Employee
Retirement Systems Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Uniform Management of Public Employee Retirement Systems Act".

SECTION 2. As used in this act:

(1) "Administrator" means a person primarily responsible for the management of a retirement system or, if no person is clearly designated, the trustee of the system who has the ultimate authority to manage the system;

(2) "Agent group of programs" means a group of retirement programs which shares administrative and investment functions but maintains a separate account for each retirement program so that assets accumulated for a particular program may be used to pay benefits only for that program's participants and beneficiaries;

(3) "Appropriate grouping of programs" means:

(A) for defined benefit plans, a cost-sharing program or an agent group of programs; and

(B) for defined contribution plans, a group of retirement programs which shares administrative and investment functions;

(4) "Beneficiary" means a person, other than the participant, who is designated by a participant or by a retirement program to receive a benefit under the program;

(5) "Code" means the federal Internal Revenue Code of 1986, as amended;

(6) "Cost-sharing program" means a retirement program for the employees of more than one (1) public employer in which all assets accumulated for the payment of benefits may be used to pay benefits to any participants or beneficiaries of the program;

(7) "Defined benefit plan" means a retirement program other than a defined contribution plan;

(8) "Defined contribution plan" means a retirement program that provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account; any income, expenses, gains, and losses credited or charged to the account; and any forfeitures of accounts of other participants that may be allocated to the participant's account;

(9) "Employee" includes an officer of a public employer;

(10) "Fair value" means the amount that a willing buyer would pay a willing seller for an asset in a current sale, as determined in good faith by a fiduciary;

(11) "Fiduciary" means a person who:

(A) exercises any discretionary authority to manage a retirement system;

(B) exercises any authority to invest or manage assets of a system;

(C) provides investment advice for a fee or other direct or indirect compensation with respect to assets of a system or has any authority or responsibility to do so; or

(D) is a trustee or a member of a board of trustees.

(12) "Furnish" means:

(A) to deliver personally, to mail to the last known place of employment or home address of the intended recipient, or, if reasonable grounds exist to believe that the intended recipient would receive it in ordinary course, to transmit by any other usual means of communication; or

(B) to provide to the intended recipient's public employer if reasonable grounds exist to believe that the employer will make a good faith effort to deliver personally, by mail, or by other usual means of communication;

(13) "Governing law" means state and local laws establishing or authorizing the creation of a retirement program or system and the principal state and local laws and regulations governing the management of a retirement program or system or assets of either;

(14) "Guaranteed benefit policy" means an insurance policy or contract to the extent the policy or contract provides for benefits in a guaranteed amount. The term includes any surplus in a separate account, but excludes any other portion of a separate account;

(15) "Insurer" means a company, service, or organization qualified to engage in the business of insurance in this state;

(16) "Nonforfeitable benefit" means an immediate or deferred benefit that arises from a participant's service, is unconditional, and is enforceable against the retirement system;

(17) "Participant" means an individual who is or has been an employee enrolled in a retirement program and who is or may become eligible to receive, or is currently receiving, a benefit under the program, or whose beneficiaries are or may become eligible to receive a benefit. The term does not include an individual who is no longer an employee of a public employer and has not accrued any nonforfeitable benefits under the program;

(18) "Public employer" means this state or any political subdivision, or any agency or instrumentality of this state or any political subdivision, whose employees are participants in a retirement program;

(19) "Retirement program" means a program of rights and obligations which a public employer establishes or maintains and which, by its express terms or as a result of surrounding circumstances:

(A) provides retirement income to employees; or

(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond;

(20) "Retirement system" means an entity established or maintained by a public employer to manage one or more retirement programs, or to invest or manage the assets of one or more retirement programs; and

(21) "Trustee" means a person who has ultimate authority to manage a retirement system or to invest or manage its assets.

SECTION 3. This act applies to all retirement programs and retirement systems, except:

(1) A retirement program that is unfunded and is maintained by a public employer solely for the purpose of providing deferred compensation for a select group of management employees or employees who rank in the top five percent (5%) of employees of that employer based on compensation;

(2) A severance-pay arrangement under which:

(A) payments are made solely on account of the termination of an employee's service and are not contingent upon the employee's retiring;

(B) the total amount of the payments does not exceed the equivalent of twice the employee's total earnings from the public employer during the year immediately preceding the termination of service; and

(C) all payments are completed within twenty-four (24) months after the termination of service;

(3) An arrangement or payment made on behalf of an employee because the employee is covered by Title II of the Social Security Act, as amended;

(4) A qualified governmental excess benefit arrangement within the meaning of Section 415(m) of the Code;

(5) An individual retirement account or individual retirement annuity within the meaning of Section 408 of the Code;

(6) A retirement program consisting solely of annuity contracts or custodial accounts satisfying the requirements of Section 403(b) of the Code; or

(7) A program maintained solely for the purpose of complying with workers' compensation laws or disability insurance laws.

SECTION 4.

(a) Except as otherwise provided in subsection (b), all assets of a retirement system are held in trust. The trustee has the exclusive authority, subject to this act, to invest and manage those assets.

(b) Assets of a retirement system which consist of insurance contracts or policies issued by an insurer, assets of an insurer, and assets of the system held by an insurer need not be held in trust.

(c) If an insurer issues a guaranteed benefit policy to a retirement system, assets of the system include the policy but not assets of the insurer.

(d) If a retirement system invests in a security issued by an investment company registered under the Investment Company Act of 1940, the assets of the system include the security but not assets of the investment company.

SECTION 5.

(a) In addition to other powers conferred by the governing law, a trustee has exclusive authority, consistent with the trustee's duties under this act, to:

(1) Establish an administrative budget sufficient to perform the trustee's duties and, as appropriate and reasonable, draw upon assets of the retirement system to fund the budget;

(2) Obtain by employment or contract the services necessary to exercise the trustee's powers and perform the trustee's duties, including actuarial, auditing, custodial, investment, and legal services; and

(3) Procure and dispose of goods and property necessary to exercise the trustee's powers and perform the trustee's duties.

(b) In exercising its authority under this section, a trustee is subject to the fiduciary duties of this act, but not to career service, personnel, procurement, or similar general laws relating to the subjects of subsection (a).

SECTION 6.

(a) A trustee or administrator may delegate functions that a prudent trustee or administrator acting in a like capacity and familiar with those matters could properly delegate under the circumstances.

(b) The trustee or administrator shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the retirement program; and

(3) Periodically reviewing the agent's performance and compliance with the terms of the delegation.

(c) In performing a delegated function, an agent owes a duty to the retirement system and to its participants and beneficiaries to comply with the terms of the delegation and, if a fiduciary, to comply with the duties imposed by Section 7.

(d) A trustee or administrator who complies with subsections (a) and (b) is not liable to the retirement system or to its participants or beneficiaries for the decisions or actions of the agent to whom the function was delegated.

(e) By accepting the delegation of a function from the trustee or administrator, an agent submits to the jurisdiction of the courts of this state.

(f) A trustee may limit the authority of an administrator to delegate functions under this section.

SECTION 7. A trustee or other fiduciary shall discharge duties with respect to a retirement system:

(1) Solely in the interest of the participants and beneficiaries;

(2) For the exclusive purpose of providing benefits to participants and beneficiaries and paying reasonable expenses of administering the system;

(3) With the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;

(4) Impartially, taking into account any differing interests of participants and beneficiaries;

(5) Incurring only costs that are appropriate and reasonable; and

(6) In accordance with a good-faith interpretation of the law governing the retirement program and system.

SECTION 8.

(a) In investing and managing assets of a retirement system pursuant to Section 7, a trustee with authority to invest and manage assets:

(1) Shall consider among other circumstances:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the role that each investment or course of action plays within the overall portfolio of the retirement program or appropriate grouping of programs;

(D) the expected total return from income and the appreciation of capital;

(E) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(F) for defined benefit plans, the adequacy of funding for the plan based on reasonable actuarial factors;

(2) Shall diversify the investments of each retirement program or appropriate grouping of programs unless the trustee reasonably determines that, because of special circumstances, it is clearly prudent not to do so;

(3) Shall make a reasonable effort to verify facts relevant to the investment and management of assets of a retirement system;

(4) May invest in any kind of property or type of investment consistent with this act; and

(5) May consider benefits created by an investment in addition to investment return only if the trustee determines that the investment providing these collateral benefits would be prudent even without the collateral benefits.

(b) A trustee with authority to invest and manage assets of a retirement system shall adopt a statement of investment objectives and policies for each retirement program or appropriate grouping of programs. The statement must include the desired rate of return on assets overall, the desired rates of return and acceptable levels of risk for each asset class, asset-allocation goals, guidelines for the delegation of authority,

and information on the types of reports to be used to evaluate investment performance. At least annually, the trustee shall review the statement and change or reaffirm it.

SECTION 9.

(a) A trustee may return a contribution with interest to a public employer or employee, or make alternative arrangements for reimbursement, if the trustee determines the contribution was made because of a mistake of fact or law.

(b) Upon termination of a retirement program, a trustee may return to a public employer any assets of the program remaining after all liabilities of the program to participants and beneficiaries have been satisfied.

(c) If a retirement program provides for individual accounts and permits a participant or beneficiary to exercise control over the assets in such an account and a participant or beneficiary exercises control over those assets:

(1) The participant or beneficiary is not a fiduciary by reason of the exercise of control; and

(2) A person who is otherwise a fiduciary is not liable for any loss, or by reason of any breach of fiduciary duty, resulting from the participant's or beneficiary's exercise of control.

(d) If an insurer issues to a retirement system a contract or policy that is supported by the insurer's general account but is not a guaranteed benefit policy, the insurer complies with Section 7 if it manages the assets of the general account with the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose, taking into account all obligations supported by the general account.

SECTION 10. In evaluating performance of a trustee or other fiduciary:

(1) Compliance by the trustee or other fiduciary with Sections 6 through 8 must be determined in light of the facts and circumstances existing at the time of the trustee or fiduciary's decision or action and not by hindsight.

(2) The trustee's investment and management decisions must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the program or appropriate grouping of programs.

SECTION 11.

(a) A trustee or other fiduciary who breaches a duty imposed by this act is personally liable to a retirement system for any losses resulting from the breach and any profits made by the trustee or other fiduciary through use of assets of the system by the trustee or other fiduciary. The trustee or other fiduciary is subject to other equitable remedies as the court considers appropriate, including removal.

(b) An agreement that purports to limit the liability of a trustee or other fiduciary for a breach of duty under this act is void.

(c) A retirement system may insure itself against liability or losses occurring because of a breach of duty under this act by a trustee or other fiduciary.

(d) A trustee or other fiduciary may insure against liability or losses occurring because of a breach of duty under this act if the insurance is purchased or provided either by the trustee or fiduciary personally or, on the trustee or fiduciary's behalf, by this state, the retirement system, a public employer whose employees participate in a retirement program served by the trustee or fiduciary, an employee representative whose members participate in a retirement program served by the trustee or fiduciary, or the trustee or fiduciary's employer.

SECTION 12.

(a) A multimember body having authority to invest or manage assets of a retirement system may deliberate about, or make tentative or final decisions on, investments or other financial matters in executive session if disclosure of the deliberations or decisions jeopardizes the ability to implement a decision or to achieve investment objectives.

(b) A record of a retirement system that discloses deliberations about, or a tentative or final decision on, investments or other financial matters is not an open or public record under the Open Records Law compiled in title 10, chapter 7 to the extent and so long as its disclosure jeopardizes the ability to implement an investment decision or program or to achieve investment objectives.

SECTION 13.

(a) An administrator shall prepare and disseminate:

(1) A summary plan description of each retirement program;

(2) A summary description of any material modification in the terms of the program and any material change in the information required to be contained in the summary plan description, to the extent the modification or change has not been integrated into an updated summary plan description;

(3) An annual disclosure of financial and actuarial status; and

(4) An annual report.

(b) An administrator shall make available for public examination in the principal office of the administrator and in other places if necessary to make the information reasonably available to participants:

(1) The governing law of the retirement program and system;

(2) The most recent summary plan description;

(3) Summary descriptions of modifications or changes described in subsection (a)(2) that have been provided to participants and beneficiaries but have not yet been integrated into the summary plan description;

(4) The most recent annual disclosure of financial and actuarial status;
and

(5) The most recent annual report.

(c) Upon written request by a participant, beneficiary, or member of the public, an administrator shall provide a copy of any publication described in subsection (b). Except as otherwise provided in Section 14(a), the administrator may charge a reasonable fee to cover the cost of providing copies. The administrator shall provide the copies within thirty (30) days after the request or, if a fee is charged, within thirty (30) days after receiving payment.

SECTION 14.

(a) An administrator shall furnish to each participant and to each beneficiary who is receiving benefits under a retirement program:

(1) A copy of the most recent summary plan description, along with any summary descriptions of modifications or changes described in Section 13(a)(2), within three (3) months after a person becomes a participant or, in the case of a beneficiary, within three (3) months after a person first receives benefits, or, if later, within four (4) months after the retirement program becomes subject to this act;

(2) The summary description of any modifications or changes described in Section 13(a)(2), within seven (7) months after the end of the fiscal year in which a modification or change has been made;

(3) A copy of an updated summary plan description that integrates all modifications and changes at intervals not exceeding five (5) years; and

(4) The annual report within seven (7) months after the end of each fiscal year.

(b) An administrator shall provide to a participant or beneficiary a statement containing information that would permit the participant or beneficiary to estimate projected benefits reasonably, to the extent the information is regularly maintained by the retirement system. The information must be provided with the annual report or upon written request of the participant or beneficiary. The information need not be provided to a participant or beneficiary who is currently receiving benefits.

(c) A participant who is not currently receiving benefits is entitled without charge to one statement under subsection (b) during any fiscal year. An administrator may charge a reasonable fee to cover the cost of providing other statements. The administrator shall provide the statements within thirty (30) days after the participant or beneficiary's request or, if a fee is charged, within thirty (30) days after receiving payment.

SECTION 15. An administrator shall file with the department of finance and administration a copy of:

(1) The governing law of the retirement program and system within four (4) months after the system becomes subject to this act and an updated copy at least once every year thereafter;

(2) The summary plan description within four (4) months after the system becomes subject to this act and of updated summary plan descriptions at the same time they are first furnished to any participant or beneficiary under Section 14(a)(3);

(3) Any summary description of modifications or changes within seven (7) months after the end of the fiscal year in which a modification or change has been made; and

(4) The annual disclosure of financial and actuarial status and annual report within seven (7) months after the end of each fiscal year.

SECTION 16.

(a) A summary plan description and a summary description of modifications or changes under Section 13(a)(2) must be written in a manner calculated to be understood by the average participant and be accurate and sufficiently comprehensive reasonably to inform the participants and beneficiaries of their rights and obligations under the retirement program.

(b) A summary plan description must contain:

(1) The name of the retirement program and system and type of administration;

(2) The name and business address of the administrator;

(3) The name and business address of each agent for service of process;

(4) Citations to the governing law of the retirement program and system;

(5) A description of the program's requirements respecting eligibility for participation and benefits;

(6) A description of the program's provisions providing for nonforfeitable benefits;

(7) a description of circumstances that may result in disqualification, ineligibility, or denial or loss of benefits;

(8) A description of the benefits provided by the program, including the manner of calculating benefits and any benefits provided for spouses and survivors;

(9) The source of financing of the program;

(10) The identity of any organization through which benefits are provided;

(11) The date the fiscal year ends;

(12) The procedures to claim benefits under the program and the administrative procedures available under the program for the redress of claims that are denied in whole or in part; and

(13) Notice of the availability of additional information pursuant to Sections 13(b), 13(c), 14(b), 14(c), and 15.

SECTION 17.

(a) As used in this section, "qualified public accountant" means:

(1) an auditing agency of this state, or a political subdivision of this state, which has no direct relationship with the functions or activities of a retirement system or its fiduciaries other than:

(A) functions relating to this act; or

(B) a relationship between the system and the agency's employees as participants or beneficiaries on the same basis as other participants and beneficiaries; or

(2) a person who is an independent public accountant, certified or licensed by a regulatory authority of a state.

(b) As used in this section, "related person" of an individual means:

(1) The individual's spouse or a parent or sibling of the spouse;

(2) The individual's descendant, sibling, or parent, or the spouse of the individual's descendant, sibling, or parent;

(3) Another individual residing in the same household as the individual;

(4) A trust or estate in which an individual described in paragraph (1), (2), or (3) has a substantial interest;

(5) A trust or estate for which the individual has fiduciary responsibilities; or

(6) An incompetent, ward, or minor for whom the individual has fiduciary responsibilities.

(c) An annual disclosure of financial and actuarial status must contain:

(1) The name of the retirement system and identification of each retirement program and, if programs are in an appropriate grouping of programs, of each appropriate grouping of programs;

(2) The name and business address of the administrator;

(3) The name and business address of each trustee and each member of a board of trustees and a brief description of how the trustee or member was selected;

(4) The name and business address of each agent for service of process;

(5) The number of employees covered by each retirement program not in an appropriate grouping of programs, or by each appropriate grouping of programs, or both;

(6) The name and business address of each fiduciary;

(7) The current statement of investment objectives and policies required by Section 8(b);

(8) Financial statements and notes to the financial statements in conformity with generally accepted accounting principles;

(9) An opinion on the financial statements by a qualified public accountant in conformity with generally accepted auditing standards;

(10) In the case of a defined benefit plan, actuarial schedules and notes to the actuarial schedules in conformity with generally accepted actuarial principles and practices for measuring pension obligations;

(11) In the case of a defined benefit plan, an opinion by a qualified actuary that the actuarial schedules are complete and accurate to the best of the actuary's knowledge, that each assumption and method used in preparing the schedules is reasonable, that the assumptions and methods in the aggregate are reasonable, and that the assumptions and methods in combination offer the actuary's best estimate of anticipated experience;

(12) A description of any material interest, other than the interest in the retirement program itself, held by any public employer participating in the system or any employee organization representing employees covered by the system in any material transaction with the system within the last three (3) years or proposed to be effected;

(13) A description of any material interest held by any trustee, administrator, or employee who is a fiduciary with respect to the investment and management of assets of the system, and, if the fiduciary is an individual, by a related person of the beneficiary, in any material transaction with the system within the last three (3) years or proposed to be effected;

(14) A schedule of the rates of return, net of total investment expense, on assets of the system overall and on assets aggregated by category over the most

recent one-year, three-year, five-year, and 10-year periods, to the extent available, and the rates of return on appropriate benchmarks for assets of the system overall and for each category over each period;

(15) A schedule of the sum of total investment expense and total general administrative expense for the fiscal year expressed as a percentage of the fair value of assets of the system on the last day of the fiscal year, and an equivalent percentage for the preceding five (5) fiscal years; and

(16) A schedule of all assets held for investment purposes on the last day of the fiscal year aggregated and identified by issuer, borrower, lessor, or similar party to the transaction stating, if relevant, the asset's maturity date, rate of interest, par or maturity value, number of shares, cost, and fair value and identifying any asset that is in default or classified as uncollectible.

SECTION 18. An annual report must contain:

(1) The name and business address of each trustee and each member of a board of trustees;

(2) The financial statements, but not the notes, required by Section 17(c)(8);

(3) For defined benefit plans, the actuarial schedules, but not the notes, required by Section 17(c)(10);

(4) The schedules described in Section 17(c)(14) and (15).

(5) A brief description of and information about how to interpret the statements and schedules;

(6) Other material necessary to summarize fairly and accurately the annual disclosure of financial and actuarial status; and

(7) Notice of the availability of additional information pursuant to Sections 13(b), 13(c), 14(b), 14(c), and 15.

SECTION 19.

(a) A public employer, participant, beneficiary, or fiduciary may maintain an action:

- (1) To enjoin an act, practice, or omission that violates this act;
- (2) For appropriate equitable relief for breach of trust under Section 11; or
- (3) For other appropriate equitable relief to redress the violation of or to

enforce this act.

(b) The department may maintain an action to enjoin a violation of Section 15.

(c) In an action under this section by a participant, beneficiary, or fiduciary, the court may award reasonable attorney fees and costs to either party.

SECTION 20. An action under Section 19 must be commenced within the period of limitations in this state, if any, for actions for breach of trust or, if none, within three (3) years.

SECTION 21. Benefits of a retirement program may not be assigned or alienated and are exempt from claims of creditors, except to the extent expressly permitted by any other law of this state.

SECTION 22. In applying and construing this act, consideration must be given to the need to promote uniformity of the law with respect to its subject among the states that enact it.

SECTION 23. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

SECTION 24. Before January 1, 1999, this act does not apply to an eligible deferred compensation plan that was in existence on August 20, 1996, and satisfies the requirements of Section 457 of the Code, unless all assets and income of the plan are held in trust for the exclusive benefit of participants and their beneficiaries.

SECTION 25. This act shall take effect July 1, 2006, the public welfare requiring it.